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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Impact Products, Inc.

Serial No. 75/452,838

Richard G. Martin of MacMillan, Sobanski & Todd, LLC
for Impact Products, Inc.

Amos T. Matthews, Trademark Examining Attorney, Law Office
108 (David Shallant, Managing Attorney).

Before Wendel, Bucher and Bottorff, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Impact Products, Inc. has filed an application to
register STACK RACK for goods, as amended, identified as a
"liquid dispensing system consisting of plastic shelves,
dispensing containers, trigger-operated spray bottles, and
color coded labels for use in dispensing pre-measured

liquid concentrates or ready to use chemicals, for use in the janitorial maintenance of commercial buildings."¹

Registration has been finally refused on the ground that the mark is merely descriptive under Section 2(e)(1) of the Trademark Act. The refusal has been appealed and both applicant and the Examining Attorney have filed briefs. Applicant waived its right to an oral hearing.

The Examining Attorney maintains that STACK RACK, when applied to the identified goods, describes a feature of the goods, namely, that the goods include a framework of shelves used as a rack allowing one to stack the dispensing containers thereon. As support for his position, the Examining Attorney relies upon the following dictionary definitions of the terms "stack" and "rack":

stack An orderly pile or heap. To arrange in a stack: PILE. To pile in or on.

rack A framework, stand, or grating on or in which articles are placed.²

In addition, the Examining Attorney has introduced excerpts of articles retrieved from the Nexis database which show use of the entire term "stack rack," the following being representative thereof:

¹ Serial No. 75/452,838, filed March 19, 1998, claiming a first use date and first use in commerce date of January 1994.

Display Technologies has been busy developing a slew of new offerings for its POP clients, including a customized TechStoc serpentine dispenser for Ocean Spray and a customized TechStoc Stack Rack for Evian.

...

To achieve maximum display from limited floor space, Display Technologies' "stack rack" positions product at an angle and the unit can be stacked four high. It can be used vertically, as an upright floor-stand, or horizontally as a floor seller. The unit's flexibility also allows it to be used in secondary spaces such as ...

Food & Beverage Marketing (March 1, 1999);

The Pepsi Stack Rack speaks to beverage marketers' desire to be here, there and everywhere in any store. To that end, the four-shelf unit can "be very versatile," stacking either horizontally or vertically.

Beverage World (December 1998);

... 2. Crate & Barrel's chrome CD Stack Rack holds 20 discs. ...

In Style (January 1998);

There are many varieties of simple vertical stack racks with individual shelves for each disc that can be found at record stores in different designs, colors, and capacities. One variation on this theme is to have an individual spring-loaded slot, which pops the desired disc forward with a light ...

...

Of course, the storage options are much wider yet. There are designs such as the zig-zag stack racks that hold rows of 10 to 12 jewel boxes on end on both sides of a vertical column, "skyscraper" type vertical units that hold 100 or more discs or caddies on shelves in a straight column ...

CD-ROM Professional (July 1995);

Soft lines, which offers 23,000 square feet including domestics, utilizes a wire stack rack for shirts and shoes, bins for towels, and double semi-circular waterfall racks for apparel end-caps.

Discount Store News (November 7, 1988);

² Webster's Ninth New Collegiate Dictionary.

Newspaper stack racks keep newspapers organized, and log presses make them into logs for the fire. The newspaper stack rack from the Hold Everything catalogue stores more than a week's worth of newspapers, which can then be recycled, bundled or made into logs.

The New York Times (February 13, 1986); and

The Stack Rack for Remtron lets you tuck more than 600 sheets of paper underneath your Epson MX-80 printer. Stack Rack features a bail guide that prevents the paper from snagging and a paper stop that halts the paper from sliding out the rear during operation or transportation. The unit is constructed of clear acrylic and is equipped with skip-resistant padded feet.

Byte (November 1982).

Applicant contends that its goods comprise a system for dispensing liquids and the mark STACK RACK does not immediately convey information with respect to any characteristic or feature of this liquid dispensing system. Applicant notes that the composite term "stack rack" has no dictionary meaning in itself and argues that many different combinations of meanings are possible from the words "rack" and "stack" alone. Applicant insists that its system does not consist of racks per se or a "stack" of "racks" but rather the most significant feature of its goods are the plastic dispenser containers. Applicant argues that the items in most of the articles relied upon by the Examining Attorney appear to be modular in nature and configurable by the purchaser, whereas applicant's goods are not

"stackable" racks. Other articles are said to describe shelf-like units on which goods may be stacked or piled. None of the articles, applicant insists, describe a dispensing system such as applicant's.

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic or feature of the goods with which it is being used. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Whether or not a particular term is merely descriptive is determined not in the abstract, but rather in relation to the goods for which registration is sought, the context in which the designation is being used, and the significance the designation is likely to have to the average purchaser as he or she encounters the goods bearing the designation, because of the manner in which it is used. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary that the term describe all the characteristics or features of the goods in order to be merely descriptive; it is sufficient if the term describes one significant attribute thereof. See *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

From the literature submitted by applicant to demonstrate the nature of its goods, it is readily apparent that applicant's system includes as the basic framework for the dispensing containers for the liquid concentrates or chemicals, a series of three to five shelves arranged one over another. Such a formation would clearly fall within the definition of a "rack." Although this rack framework appears to be fixed and not modular or configurable by the purchasers, nonetheless, it is a "rack." The dispensing containers are placed on each of the shelves arranged in this rack formation. In other words, the dispensing containers are arranged in a stack, one over another, on this rack. Thus, the framework acts as a "stack rack" for the liquid dispensing containers.

While we would agree with applicant that STACK RACK does not convey information as to the nature of the dispensing system as a whole, such as the type of liquids dispensed or the purpose for the system, this is not the appropriate test under Section 2(e)(1). As noted above, in order to be merely descriptive of the goods, the term in question need only describe one significant attribute or feature of the goods. Here we consider the framework or spatial arrangement for the various components of applicant's liquid dispensing system to be a significant

attribute or feature of the goods. The term STACK RACK immediately conveys information as to this specific feature of the goods.³

While applicant argues that there are many potential meanings for the combination of the terms "stack" and "rack" and thus the mark creates incongruity, we do not find this to be the case. As pointed out, the issue of mere descriptiveness is not determined in the abstract, but rather in relation to the particular goods with which the mark is being used. Thus, the question is whether purchasers, being familiar with the particular dispensing systems with which the term STACK RACK is being used, would readily grasp the significance of the term as a descriptor of the configuration of the system. We are convinced that this relationship would be most apparent.

Finally, in considering the excerpts of the various articles made of record by the Examining Attorney we are aware that the term "stack rack" is used in more than one manner. In some instances, the references are to racks which are in themselves stackable, although, even then, the

³ Although the Examining Attorney has withdrawn the Section 2(d) refusal based on the mark STACK RACK for "portable metal racks for holding trays or drawers," in that registration the descriptiveness of the term STACK RACK for goods of this framework or design was also recognized, the registration having issued under the provisions of Section 2(f).

stack rack which is formed is in turn used to hold other items, such as beverages. In other instances, however, the term "stack rack" is used directly to describe a vertical rack upon which other items are placed, albeit CDs, newspapers, shirts, or computer printer paper in a pile or "stack." Such a usage of the term "stack rack" is clearly equivalent to applicant's usage of the term "stack rack." Here the term is used in connection with a system in which dispensing containers are arranged in an upwards pile on a series of shelves, thus the framework is that of a "stack rack." The connotation of the term "stack rack" remains the same, regardless of the particular items which are placed on the "stack rack."

Accordingly, we find that STACK RACK immediately conveys information to potential purchasers of a significant feature of applicant's dispensing system and thus is merely descriptive thereof.

Decision: The refusal to register under Section 2(e)(1) is affirmed.